

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

FIDELITY INFORMATION SERVICES, INC.,

Plaintiff,

-against-

09 Civ. 7589 (LAK)

DEBTDOMAIN GLMS PTE. LTD., et al.,

Defendants.

x

ORDER

LEWIS A. KAPLAN, *District Judge*.

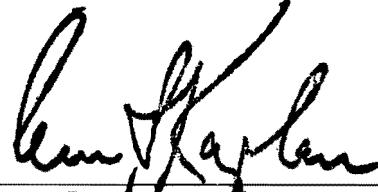
Defendants object to orders of Magistrate Judge Kevin Nathaniel Fox, dated August 12, 13 and 24, the first two of which ordered that Garry Viner, an Australian citizen, appear for a deposition in London and produce documents and the last of which denied their application for reconsideration of the first two.

The fundamental issue here is whether Viner is an officer, director or managing agent of one or more of the corporate defendants, as that determines whether the corporate defendants may be compelled to produce him for examination and to produce documents within his possession custody and control. While the corporate defendants claim otherwise, the evidence they submitted to Judge Fox in support of that contention was of dubious competency. In any case, Judge Fox's conclusion that it did not overcome the fact that Viner was listed as part of Debtdomain's "management" on its web site, at least at the time the application to compel the deposition was made. He was not obliged to accept Mr. Levy's contention that Viner was not an employee of Debtdomain and in any case properly applied a functional approach to the determination whether he was a managing agent.

The Court sees no error of fact or law. The objections to the orders are overruled.

SO ORDERED.

Dated: August 27, 2010



Lewis A. Kaplan
United States District Judge